IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7196 of 1998

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AGEW STEEL MANUFACTURING CO PVT LTD., & 1 - Petitioner(s)
Versus
MAHAGUJARAT LABOUR UNION - Respondent(s)

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Appearance :
MR KUNAL B.NAIK for M/S TRIVEDI & GUPTA for Petitioner(s) : 1 - 2.
MR SHAILESH C PARIKH for Respondent(s) : 1,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 13/09/2006

ORAL JUDGMENT

The petitioner (hereinafter referred to as, **“the industry”**) has, in the present petition preferred under Articles 226 and 227 of the Constitution of

India, challenged the order dated 13th February, 1998 made by the Industrial Tribunal, Ahmedabad (hereinafter referred to as, **“the Tribunal”**) in Review Application No.2/1994 in Reference (IT) No.307/1986. The respondent is the association of the employees (hereinafter referred to as, **“the Union”**).

Pursuant to the charter of demands raised by the Union, the above referred Reference (IT) No.307/1986 came to be made to the Tribunal. The Tribunal decided the said Reference by its judgment and award dated 17th May, 1994. Under the said award, certain demands raised by the Union were granted on condition that the concerned workmen shall have completed 240 days' service in the previous year. The said award was made effective from 1st January, 1994. Feeling aggrieved by the said condition mentioned in the award, the Union took out Review Application No.2/1994 under Rule 31 of the Industrial Disputes (Gujarat) Rules, 1966 (hereinafter referred to as, **“the Rules”**). According to the Union the reference to **“240 days' completed service in the previous year”** made in the award was accidental error/omission and was not a conscious

decision of the Tribunal.

The application was contested by the Industry. According to the Industry, the condition imposed by the Tribunal in its award dated 17th May, 1994 was not a clerical error or omission but a conscious decision of the Tribunal. Except under rule 31 of the Rules, the Tribunal had no power to review its own order. Rule 31 of the Rules circumscribed the power of review of the Tribunal to correction of accidental error or omission alone. The Tribunal, therefore, cannot review its own order and to modify the same. Under the impugned order the Tribunal did agree that the power of review conferred upon the Tribunal under rule 31 of the Rules was circumscribed. Nevertheless, the Tribunal was of the opinion that the condition imposed in the award dated 17th May, 1994 did cause injustice to several workmen. There could not have been an intention to do injustice to any workman. Therefore, the condition imposed under the order dated 17th May, 1994 was clearly an error which required to be corrected to do the complete justice. The Tribunal accordingly modified the award dated 17th

May, 1994. The several benefits conferred upon the workmen on condition that the concerned workman shall have completed 240 days' service in the previous year has now been modified to 240 days' completed service in any of the previous years. Therefore, the present petition.

Mr.Naik has submitted that the Tribunal has clearly transgressed beyond its jurisdiction. Under the guise of correcting clerical error or omission under the powers conferred by rule 31 of the Rules, the Tribunal has modified or substituted the award made earlier after conscious adjudication. In support of his submissions, Mr.Naik has relied upon the judgments of the Hon'ble Supreme Court in the matters of **The Tata Consulting Engineers v/s. The workmen employed under them** [AIR 1981 SC 599] and of **U.P.SRTC v/s. Imtiaz Hussain** [(2006)1 SCC 380].

Mr.Parikh has submitted that it was indeed a clerical error and has rightly been corrected to undo the injustice caused to the workmen.

Rule 31 of the Rules provides that, **“the Labour Court, Tribunal or Arbitrator may correct any clerical mistake or error arising from an accidental slip or omission in any award it or he issues.”**

There is no gain-saying that the powers conferred by the aforesaid rule 31 of the Rules are too narrow and can be invoked only in cases of inadvertent error or clerical mistake. In the instant case, however, the Tribunal has tried to read inadvertent error or omission by process of reasoning that the conditions imposed under the award dated 17th May, 1994 would do injustice to some workmen. I am of the opinion that Mr.Naik is right in contending that the Tribunal has transgressed its power of correcting errors conferred by rule 31 of the Rules. The power of review is not supposed to be utilised to modify the order made earlier after a long process of reasoning. The contention raised by Mr.Parikh that the Tribunal could not have intended to impose such drastic condition is not supported by materials on record. In other words, there is no material on the record to infer that the Tribunal, while making the

award dated 17th May, 1994, had any other intention or that the aforesaid condition was imposed inadvertently without any intention.

In view of the above discussion, the petition is allowed. The impugned judgment and award dated 13th February, 1998 passed by the Industrial Tribunal, Ahmedabad in Review Application No.2/1994 in Reference (IT) No.307/1986 is quashed and set-aside. The Review Application No.2/1994 in Reference (IT) No.307/1986 stands rejected. Rule is made absolute. There shall be no order as to cost.

(Ms. R.M.Doshit, J.)

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